



## POLICE DEPARTMENT

January 13, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer John Quigley  
Tax Registry No. 922996  
49 Precinct  
Disciplinary Case No. 86522/10

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The above-named member of the Department appeared before me on July 18, 2011 and September 19, 2011, charged with the following:

1. Said Police Officer John Quigley, assigned to the 49 Precinct, while on duty on December 12, 2008, at approximately 0900 hours, while in the vicinity of Astor Avenue and Colden Avenue, Bronx County, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: Police Officer Quigley grabbed Mr. Jose Vinales' clothing and pushed him backwards, without proper police necessity. (*As amended*)

P.G. 203-11, Page 1, Paragraph 2 – USE OF FORCE

2. Said Police Officer John Quigley, assigned as indicated in Specification One, at time, date and location set forth in Specification One, was discourteous to Mr. Jose Vinales, in that he yelled at him “Give me the fucking stuff.” (*As amended*)

P.G. 203-09, Page 1, Paragraph 2 DISCOURTESY

3. Said Police Officer John Quigley, assigned as indicated in Specification One, at time, date and location set forth in Specification One, did abuse his authority as a member of the New York City Police Department, in that Police Officer Quigley issued a summons to Mr. Jose Vinales without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 ABUSE OF AUTHORITY

The Department was represented by David Bernstein, Esq., Department Advocate's Office and Respondent was represented by Stuart London, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent has been found Not Guilty of Specification Nos. 1 and 2, and Guilty of Specification No. 3.

INTRODUCTION

It is not in dispute that on December 12, 2008, a female school employee ("the victim") was either pushed out of a moving vehicle or dragged by a moving vehicle that was operated by her boyfriend ("the boyfriend"). It is also not in dispute that the victim, along with her personal belongings, ended up in the street at Astor and Colden Avenues in front of Columbus High School ("the school"), where she worked. Nor is it disputed that Jose Vinales, who worked in the school with the victim, gathered her belongings from in the street and held onto them when the police, Respondent, and his partner, Police Officer Harry Pakiakis, arrived on the scene in uniform in a marked radio motor patrol car ("RMP"). What *is* in dispute is whether: 1) Respondent grabbed Vinales by his clothing and pushed him backwards, without police necessity; 2) Respondent was discourteous to Vinales when he yelled at him, "Give me the fucking stuff;" and

3) Respondent did abuse his authority as a member of the New York City Police Department by issuing a summons to Vinales without sufficient legal authority.

### SUMMARY OF EVIDENCE PRESENTED

#### The Department's Case

The Department called Jose Vinales and Lisa Fuentes as its witnesses.

#### Jose Vinales

Vinales, a resident of Bronx County, is employed as an assistant principal ("AP") with the New York City Department of Education. He testified that he has held that position for approximately six or seven years. He had been a social worker for a few years and then a social worker guidance counselor and then he became an AP in the 2008 2009 school year. He has an undergraduate degree in Forensic Psychology from John Jay College, a Master's degree in Social Work from Hunter College, and a Master's degree in Education Administration from the College of New Rochelle. Vinales testified that he has never been arrested or convicted of a crime.

Vinales was working at the school on December 12, 2008. When questioned as to whether he was working as a social worker or an AP on that date, Vinales explained that he was training to be an administrator so he was doing administrative duties which included student entries. He was working on the boys' sign in entries and making sure everything went well with the boys entering the school prior to them going through scanning. He was actually working on the outside of the building as an extra person at the corner of the school building. He was wearing a suit and tie on that date.

Vinales testified that at approximately 9:00 a.m., a sport utility vehicle (“SUV”) was parked right next to the cafeteria entrance where the boys came into the school. He saw that a female passenger and a male driver of the SUV were arguing. When he looked into the SUV he realized that the female was an employee of the building. He then observed the SUV drive across the street and he noticed that the occupants were still arguing because the SUV was shaking. Shortly after, the passenger side door opened. It appeared that either the victim jumped out or somehow the SUV began to drive off and the victim grabbed onto the SUV. It dragged her a car length or so and she fell and rolled over. Vinales, who at the time was talking to a school safety agent (“SSA”) named Nelson, said that he and Nelson went across the street to assist to see whether the victim was okay. Vinales explained that he walked over and squatted down next to the victim and began to do “the social work” thing just making sure she was okay. He said that she was very upset, she started to yell, curse and she was embarrassed, so he allowed her to vent. He then explained to her that she needed to gain some control because this involved her job and this was taking place in front of the school. Vinales stated that she managed to calm down but she appeared to be embarrassed.

Vinales testified that all the victim’s belongings were strewn over the street. He began to pick up her property as he talked to her. He explained that as he picked up stuff to put back in her bag, he informed her that he was putting her things back in her purse. Vinales said that he picked up a jacket, a scarf and he asked her if she needed to call anyone. She stated that she did have her cell phone and she pulled her cell phone out of her bag and gave it to him. Vinales started to talk to her about her identification card and at that same moment the Emergency Medical Service paramedics (“EMS”) showed up.

Vinales said that he held on to her personal belongings and that the victim was well aware of what he was doing because she was aware of what was taking place at every moment. Vinales asked her if there was anyone she needed to call and she said no, and she was aware that he had her phone and wallet.

Vinales noticed that the SUV was parked across the street. The boyfriend began to approach the victim so he and Nelson told him to back off and the boyfriend backed off. He went back to where his SUV was and he was probably a car to a car length and a half away from the victim who was still on the ground.

Shortly thereafter, Vinales said, other people arrived on the scene. Principal Fuentes came out, as did AP Giamo and more SSAs, including SSA Cruz, who was a Level III SSA supervisor. Vinales continued to talk to the victim and keep control of the situation and the school personnel allowed him to continue to talk to her while she laid on the ground. Vinales recalled seeing someone from a facility across the street call 911 and he also thought Nelson called 911. When questioned as to whether he thought the scene was chaotic or calm, he said although there were several people out there including adults, EMS, school officials, Fuentes and SSAs, he felt the scene was calm. He explained that even though students were still going into the building, none of them stopped to take part in the scene that was taking place.

Vinales observed two police officers arrive. He noticed that there was an exchange between one of the officers and Fuentes, but he was focused on the victim and did not get involved. The other officer [later identified as Respondent] came over to him and asked if he was a family member and he told the officer that he actually worked with her and that she was an employee of the school. Respondent then asked if the belongings

he had in his hand belonged to the victim and he explained that they did. Respondent asked Vinales to give him the property, so Vinales gave him her jacket, purse and scarf. When Respondent asked for the remaining items, Vinales stated that he would hand them over as soon as he let the victim know that he was turning over her cell phone and her wallet to Respondent. Vinales testified that Respondent asked him a few more times to turn over the items and Vinales again explained to Respondent that he needed to let the victim know. Vinales said that he did not have any other further conversation with Respondent. He explained that he wanted the victim to have control over her items and that he wanted to let her know what was going on.

Vinales stated that just as he took a step to let the victim know what was going on with respect to her belongings, Respondent grabbed him by his jacket lapel with two hands and Vinales was pushed back towards the sidewalk near the gate of the parking area of the school. Respondent began to use profanity and stated words to the effect of, "If you don't give me the fucking stuff, I will have you arrested." Respondent was yelling as he uttered the profanity.

Vinales said next to him was Giamo, Fuentes and Cruz, and Cruz told him to give Respondent the stuff. Vinales stated that he could not give Respondent the stuff because Respondent had his hands on him, so that he handed the rest of the items to Cruz. Cruz then turned the items over to Respondent.

Vinales stated that as Respondent pushed him, he (Vinales) uttered no words, his hands were to his side and he gave no physical resistance. When he was pushed he walked backwards. He explained that once he was grabbed, he was confused and he kept his mouth shut. When he turned the items over to Cruz, Respondent let him go and went

about his business. Fuentes escorted him (Vinales) back into the building and he went back to work.

Sometime later, Fuentes came to Vinales' office and explained to him that the officers were in her office and they wanted to talk to him. Vinales went to the office and Respondent was sitting down at a conference table and explained to him that he was going to receive a summons (Department's Exhibit 1, summons no. 431740296 8 for Disorderly Conduct). Respondent wrote the summons and handed it to Vinales and told him that he would need to appear in court to address the summons. Vinales went to court and the summons was dismissed. Vinales stated that this was the first time he filed a complaint with the Civilian Complaint Review Board (CCRB). He did not file a lawsuit with respect to this matter.

During cross-examination, Vinales was asked whether he was in the title of a social worker on December 12, 2008. He responded that he was doing administrative duties so he was, in fact, working as an AP. Vinales acknowledged that he saw the victim grab onto the SUV and being dragged meant that she became the complaining witness and the SUV's driver became the perpetrator. He admitted that he had seen the whole thing unfold before his eyes. He also acknowledged that Respondent was not on the scene when the incident took place. The incident took place at the corner of the school but students coming to school that morning could see what was taking place. He estimated that there were between 3,500 and 4,500 students coming into the building. He acknowledged that other adults came out of the building to observe what was transpiring. When asked if the situation was chaotic, Vinales stated that "[t]he area was controlled."

Vinales stated that he was standing in the street when Respondent asked him to come over to him. EMS was treating the victim at that time and Respondent's partner was having a loud conversation with Fuentes. Vinales stated that Respondent asked him if he was a family member of the victim and he responded no, then told Respondent that they worked together in the school. Upon a review of his statements to CCRB, Vinales acknowledged that he had twice recounted telling Respondent that he was not a family member of the victim and both times he did not disclose saying anything about working with the victim.

Regarding whether he thought Respondent was going to steal or lose the property, Vinales stated that it had nothing to do with that; he thought he had established a relationship with the victim and "was trying to help her out trying to gain some control of what happened." As to his relationship with the victim, Vinales never exchanged words with her prior to that date. He acknowledged that his relationship with her had only been seconds old and that he went to comfort her following the incident.

Vinales admitted that Respondent asked him for the property three separate times before he put his hands on him. He agreed that Respondent was in uniform responding to the incident when he made the request. Vinales also agreed that when Respondent made the first request, he turned over a purse, a jacket and a scarf. He said that the reason why he did not turn everything over had to do with the victim having control of the situation and letting her know that he was giving her property to the officer. He explained that he was addressing the crisis from a social worker's position. He further explained that the community, meaning the SSAs and school officials, should have helped. When asked

whether he thought the SSAs were better able to give the victim control over the situation than the officer, Vinales stated that “was not what [he] was thinking about.”

Vinales admitted that when Respondent asked him for the victim’s things, he (Vinales) did not state that he was not give him anything until he spoke to her. He acknowledged that he turned over some of the property. Vinales agreed that there was nothing preventing him from handing the property to Respondent and then telling the victim that he gave her cell phone and wallet to the officer. Vinales claimed that Respondent said, “[I]f you don’t give me the property I am going to arrest you,” with curse words attached to it. When confronted with his CCRB statement which did not contain profanity, Vinales stated that he did not think he needed to verbalize that kind of language. Vinales acknowledged that his CCRB statement was a quotation, but it was missing some words.

Vinales admitted that he eventually turned over the phone and wallet to Cruz and Cruz turned the items over to Respondent. This differed from his statement to CCRB, in which he stated that he turned over the items to Cruz and then Fuentes escorted him into the school and he did not know what Cruz did with the items. Vinales clarified that he believed Cruz gave the items to Respondent and that he did not make a mistake when he told CCRB that he did not know what happened with the items. Vinales acknowledged that once the items were turned over, he had no further contact with Respondent other than receiving the summons later on.

Vinales did not know if Fuentes went online and made the formal CCRB complaint on his behalf and he did not recall whether he himself went online and filed a complaint. As to the accuracy of his claim during direct examination that he made the

complaint, Vinales responded, "I wasn't pushed to do it we had a discussion." Vinales was questioned repeatedly as to whether he or Fuentes filed a complaint. Eventually Vinales stated, "I assume she was the one that made the complaint."

During redirect examination, it was stipulated that Vinales told CCRB that Respondent became irate, cursed and yelled at him, and repeated, "Give me the fucking stuff." Respondent also grabbed him by the jacket, pushed him back, continued to curse at him in front of everyone, and told him that if he did not give him the property he was going to arrest him.

Vinales stated that during the time when he was speaking to Respondent he was never asked what observations he made regarding the victim and the boyfriend.

During further cross-examination, Vinales acknowledged that during the first and second time Respondent asked for the victim's property, he did not curse at Vinales. It was not until the third time that he requested the property that Respondent cursed.

During questioning by the Court, Vinales stated that he received a phone call from CCRB and gave a statement. He denied making an official complaint to CCRB, then recalled that he made a call to CCRB to initiate the complaint.

During further cross-examination, Vinales did not recall either filing the complaint online or doing it in person. He acknowledged that he had received a phone call. Vinales could not recall how he actually started the complaint, whether he walked in and filed it or filed it online. He believed that he initiated the complaint but he had no details to support that belief.

Lisa Fuentes

Fuentes, a resident of Bronx County, is currently the principal of Columbus High School and has been with the Department of Education for approximately 27 years. She began as a teacher, then became an AP, and for the past eight years, she has been the principal of the school. Fuentes said she has daily interaction with members of the New York City Police Department and has an extremely positive view of the Police Department, given that they work side by side on a daily basis. She explained that her primary focus is the safety of students and when an incident occurs, she follows the guidelines of the Department of Education as well as works with the Police Department. She holds a Bachelor of Science degree in recreational therapy, a Master of Science degree in Behavioral Disability and a Master of Science in Administration; she has never been arrested or convicted of a crime.

On December 12, 2008, Fuentes was working at the school and received a call at approximately 9:00 a.m. from an SSA stating there was an incident outside. She walked outside and she observed one of her paraprofessionals who appeared to be injured on the ground and there were two officers around her. She also saw Vinales, another AP, and an SSA outside. She also noticed EMS who were attending to the victim. She described the scene as extremely calm, nothing was going on and most people were watching. She did observe an officer speaking to the boyfriend across the street.

Fuentes stated that she heard one of the officers [Respondent] interact with Vinales. As they stood around, Respondent approached Vinales for the victim's property. Vinales answered that the victim asked him to hold on to them and Respondent then demanded the items a second time. She said Vinales motioned towards the victim

and said he just wanted to ask her or tell her something. She observed Vinales take the victim's wallet and her identification card out of her bag and start to hand the bag over to Respondent. Respondent became irate and grabbed Vinales by his collar. She explained that, from what she observed, Vinales was going to retain the wallet and hand the bag over to Respondent. Once Respondent grabbed Vinales, he held him with two hands, pushed him about four or five feet behind them. Respondent then screamed, "Give me the fucking stuff."

Fuentes said she started to yell loudly to Vinales to hand the stuff over so that the officer would let him go. Fuentes said the SSA was also yelling at Vinales. She said the first rule is that you do not interfere with the Police Department and she was trying to protect that rule. She wanted to ensure that Vinales complied with Respondent's request. Shortly thereafter, Respondent walked away and Fuentes walked over to Vinales. She informed him that they were going to go into the school but before they went into the building, she checked Respondent's name and badge number on the officer's person because she "knew something that wasn't right occurred."

A few minutes after returning to the building, Fuentes received another phone call from an SSA and was informed that the officers wanted to see Vinales. She went and got Vinales and they went to her office. Respondent was there with another officer and a sergeant. Respondent wrote out a summons and issued it to Vinales.

#### Respondent's Case

Respondent called Police Officer Harry Pakakis as his witness and testified in his own behalf.

Police Officer Harry Pakiakis

Pakiakis is a five-year member of the Department currently assigned to patrol at the 49 Precinct. He has been with the 49 Precinct since July 2006 and Respondent has been his partner for over five years. He did not receive disciplinary charges with respect to the current case.

On December 12, 2008, at approximately at 9:00 a.m., Pakiakis and Respondent responded to a car accident with a pedestrian struck close to the school grounds. He stated that when they arrived on the scene, he saw SSAs, school personnel, a man across the street and the victim laying on the ground, conscious. Since people were pointing to the victim's boyfriend across the street, Pakiakis went to him and Respondent went to the victim in the street. He spoke to the boyfriend, who informed him that he had an argument with the victim. According to the boyfriend, the victim was getting out of the car, he was helping her out of the car because he wanted her out of the car and then he drove off. He noticed that she was on the ground so he turned around and went back to the location. Pakiakis said he then asked the boyfriend for identification, took it and went back to his partner to continue conducting the investigation of what was going on.

Pakiakis stated that he went over to Respondent, who was talking to the victim. Respondent was asking her questions and looking for her purse. They looked around and observed a man (Vinales) standing in the immediate area with a purse, so Respondent began to speak to Vinales. Respondent asked for the purse and Vinales did not immediately turn it over to him. Pakiakis heard Respondent ask for the purse twice and heard Vinales repeatedly say, "No." Respondent still did not have possession of the purse and Pakiakis observed Respondent grab the purse and kind of push Vinales off the

purse. He described it as a “tug and pull” to get possession of the purse. He said the incident was short and lasted a couple of seconds, after which Respondent got possession of the purse and they continued to conduct the investigation.

Pakiakis testified that the investigation resulted in the boyfriend being arrested. He also stated that Vinales was issued a summons but he was not present at that time. Pakiakis could not recall if he went back to the station house alone or with Respondent. Pakiakis stated that he had a conversation with a woman who he later learned was the principal of the school (Fuentes). She inquired as to what was going to happen to the boyfriend and he told her they were going to conduct an investigation and when they figured out what was needed, then they were going to take action. Fuentes never identified herself. Pakiakis never heard the Respondent utter profanity.

During cross-examination, Pakiakis acknowledged that the victim was being attended to by EMS. Pakiakis noted that the school was big and he did observe some SSAs present but he could not recall exactly how many were on the scene. He acknowledged that there was school personnel on the scene including Fuentes, who he did not know was the principal at the time of the incident.

Pakiakis acknowledged that he spoke to the boyfriend, he discussed the situation with his partner and, at some point, he also spoke to the principal. He estimated that these conversations took approximately ten minutes. He said that Respondent had one hand on the purse and his other hand was on Vinales but he could not recall where on Vinales’ body that Respondent grabbed. Regarding his statement at his April 2009 CCRB interview that he could not see where Respondent touched Vinales because he was behind Respondent, Pakiakis testified that it was difficult to see what was going on

between Respondent and Vinales, "but you can tell there was an interaction." Pakiakis denied ever hearing Vinales state that he worked at the school. Pakiakis acknowledged that Vinales never yelled, flailed his arms or acted agitated during the incident.

During re-direct examination, Pakiakis stated that Respondent never punched Vinales nor was there any real struggle between the two of them. He noted that Vinales never fell to the ground as a result to the incident.

During questioning by the Court, Pakiakis stated that Fuentes never identified herself as the principal, nor did she identify the victim or Vinales as members of the school staff. He explained that she seemed to want the boyfriend locked up but they had just arrived and had not conducted any investigation yet. Pakiakis stated that he did not notice Vinales until the moment when they were looking for the victim's possessions.

#### Respondent

Respondent is an over-13-year member of the Department currently assigned to patrol at the 49 Precinct. On December 12, 2008, at approximately 9:00 a.m., he and Pakiakis, his partner of five years, responded to a radio run of either a dispute or an accident in the vicinity of the school. When they arrived at the location, he saw the victim lying on the ground being treated by EMS. Respondent stated he proceeded to the victim and his partner went to the boyfriend who was standing by the SUV. He noted that he did not have a lot of conversation with the victim because she was being treated by EMS. He eventually did speak to her and she informed him that she was having a dispute with her boyfriend in the car on her way to the school, he was hitting her in the

car and at some point when they got close to the location he pushed her out of the car while the car was still moving.

At some point, Respondent realized the victim did not have her purse and he observed a male (Vinales) in the crowd with a purse, so he approached him. Respondent said he requested the purse because he was the police and it was his job to safeguard her property but Vinales said no. Respondent asked Vinales if he knew the victim. Vinales said no, that they worked in the same building, so Respondent told him to hand over the purse and Vinales said no again. Respondent said he asked for the purse again and Vinales refused. Respondent said he did not utter any obscenities; he grabbed Vinales and removed the purse from him. When asked to describe how he grabbed him, he said that he grabbed him about the coat collar with one hand, he believed, and he took the purse away. He noted that there was no struggle at that point. He did not have to use any objects to obtain the purse. Vinales did not fall to the ground and he did not sustain any injuries. He stated that neither Vinales nor anyone else said anything at that point.

Respondent said he continued with his investigation. He continued to speak to the victim while Pakiakis continued to speak to the boyfriend. He and his partner had a few exchanges and they came to the conclusion that the boyfriend was the perpetrator and that he needed to be arrested. He stated that Pakiakis took the arrest.

Once Pakiakis made the arrest, Respondent looked around the crowd to see if Vinales was still there because he was going to issue him a summons for refusing a lawful order, but Vinales was no longer on the street. At the same time, his sergeant arrived at the scene to verify the arrest. Respondent and his sergeant went into the school, someone got Vinales, and they were taken into an office. Respondent was able to

identify Vinales and issue him the summons at that time. He recalled writing the Penal Law section for Disorderly Conduct, 240.20, on the summons but he believed he left out the subsection, which he believed was E.

Respondent then left the location and went back to the station house to assist his partner with the arrest. Respondent could not recall if he drove back with the perpetrator to the station house. He never yelled, “[G]ive me the fucking stuff.” He could not recall if he threatened to arrest Vinales if he did not give him the purse. His sergeant was present when Vinales was issued the summons. He wanted to get the victim’s property from Vinales because he was concerned “that the property would disappear or somebody would leave with the property,” and he (Respondent) would be in trouble if he did not safeguard her property.

During cross-examination, Respondent acknowledged that there were two EMS workers on the scene, multiple SSAs and many people dressed in business attire. He could not recall seeing Vinales on the scene. The first time he noticed him was when he realized he did not have the victim’s purse and he realized Vinales had it. Respondent acknowledged stating that he asked Vinales whether he was a family member or if he knew the victim. He denied that Vinales stated they worked together. Instead, Vinales said that they worked in the same building.

Respondent stated that he asked Vinales for the purse and he could not recall exactly what he said but he knew Vinales refused to supply him with it each time he asked. He agreed that Vinales never resisted or flailed his arms in any threatening motions. Respondent denied using any profanity during the interaction, despite the assertions of Vinales and Fuentes that he said, “[G]ive me the fucking stuff.”

During questioning by the Court, Respondent could not recollect Vinales having other items and turning them over to him. He recalled requesting the purse and having to take it from him to actually receive it. He noted that Vinales never identified himself as a teacher or an administrator at the school. Respondent did not remember Vinales asking to confirm with the victim before turning items over to him.

During further direct examination, Respondent stated that, had Vinales asked to talk to the victim, he would have escorted him over to her. He did not recall Vinales stating that he needed permission from the victim to give the items to him.

A stipulation was entered between the parties that a Fire Department pre-hospital care report noted that the victim was fully immobilized and transported to the hospital.

#### FINDINGS AND ANALYSIS

##### Specification No. 1

Respondent stands charged herein with, while on duty and assigned to the 49 Precinct, on December 12, 2008, in the vicinity of Astor and Colden Avenues in the Bronx, he engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that Respondent grabbed the clothing of Jose Vinales and pushed him backwards without proper police necessity.

Evidence adduced at trial established that Respondent was working patrol, in uniform, in a marked RMP on the incident date. He responded to a radio run at the location and found a female victim in the street being treated by EMS and a crowd pointing to a man, the victim's boyfriend, across the street standing by a vehicle. Respondent testified that he responded to the victim and his partner, Police Officer Harry

Pakiakis went to speak to the boyfriend. Respondent testified that the victim told him she had a verbal dispute with her boyfriend in a vehicle as they approached Columbus High School, where she works. Her boyfriend pushed her out of the vehicle as he drove and she ended up dragged and later on the ground. It is undisputed that at some point, Respondent approached a man by the name of Jose Vinales who was in possession of the victim's personal belongings.

Respondent testified that Vinales was in the crowd of people with the victim's possessions. He asked Vinales if he was a friend or relative of the victim and he responded, "No." He stated that he worked in the same building as her. Respondent stated that he asked Vinales for her belongings two to three times and each time Vinales refused to turn them over to him. Respondent testified that the victim was being treated medically and he needed to verify her identity with an identification or driver's license and that Vinales likely had that information in his possession. Respondent eventually grabbed Vinales by the collar and took the victim's purse from him.

Vinales testified that when Respondent asked for the victim's belongings, he turned over her jacket and scarf, but when it came to the wallet, he wanted to get permission from the victim before doing so. Respondent then pushed him back with two hands to the curb and uttered, "Give me the fucking stuff," and "I'll have you arrested." Eventually, the victim's items were turned over to Respondent and Vinales returned to work in the school.

Vinales corroborated Respondent's account in many ways. He admitted that he was not a friend or relative of the victim, but simply worked in the building where she worked. He acknowledged that Respondent asked him for the victim's personal

belongings more than once and he failed to turn over her wallet to him. He agreed that Respondent used force to get the wallet from him.

Lisa Fuentes testified before this Court. She has been the school's principal for the past eight years. She testified that she interacts with members of the Police Department daily and has a positive relationship with them. On the incident date, she saw one of her paraprofessionals, who appeared to be injured, in the street with EMS. She saw two police officers, one with the boyfriend across the street and one with the victim. She saw Respondent approach and ask Vinales for the victim's belongings. She observed Vinales hand over the bag to Respondent without the wallet. She then observed Respondent grab Vinales by the collar and push him back about four feet to the fence and state, "[G]ive me the fucking stuff." Fuentes stated that she wanted Vinales to comply with the request and he eventually did. She noted Respondent's name and badge number before walking Vinales inside the school because she "knew something that wasn't right occurred."

It was stipulated by the parties that the Fire Department pre-hospital report indicated that the victim was immobilized and transported to the hospital.

What is of major concern to this Court as a review of the evidence in this case is made, is that when the two police officers arrived on the scene, Respondent and his partner Pakiakis, not one person on the scene bothered to identify himself or herself to the police and explain their role. Pakiakis testified that he spoke to a woman who was concerned about what would happen to the boyfriend. He later learned that the woman he spoke to was the school's principal, Fuentes. Yet, she never identified herself to Pakiakis or stated what she observed. Fuentes was cross-examined in this matter and

testified that she observed this incident unfold, and she also stated that she never heard Vinales state that he was a social worker at the school, or becoming an AP or make any type of identification to the police.

Vinales testified in this matter. He stated that Respondent asked him if he was a friend or relative of the victim and he replied in the negative. He told him he worked in the building, but he never identified himself as a social worker from the school or that he was training to become an AP there. He never stated that he observed the events unfold and watched the victim get dragged by the car and that he then picked up her belongings from the street. All of this information certainly would have been helpful to the police who did not see the events as they unfolded and had to conduct an investigation once they arrived on the scene to determine what happened. As Respondent asked Vinales for the belongings, he testified that he handed Respondent the purse, the jacket and the scarf, but he held on to her cell phone and her wallet. It was not until he was grabbed and told, "Give me the fucking stuff," and "I will have you arrested" that Vinales turned over the items to Respondent.

Vinales testified that he asked Respondent if he could approach the victim and ask her permission before turning the items over to Respondent. Given the fact that the victim was being treated by EMS and that Vinales was being evasive as to who he was and not cooperating, there is no reason to believe that Respondent would allow Vinales to approach the victim, who was undergoing medical treatment.

Vinales admitted during cross-examination that Respondent asked him three times before he put his hands on him. When asked why he did not just comply with the police

officer in uniform, Vinales responded, "School Safety Agents are better able to control situations than police officers in uniform."

Vinales was evasive during cross-examination. He was asked several times if he was the one who filed the CCRB complaint and the following colloquy occurred.

**Q:** Would it be fair to say that she actually the principal, Lisa Fuentes, went on line and made the formal complaint on your behalf for you?

**A:** I don't know if it was on my behalf for me, I was going to do that.

**Q:** Excuse me?

**A:** I don't know if it was for me we just had a discussion it was the right thing to do.

**Q:** But I am accurate in indicating that the principal, Lisa Fuentes, went on line and made the complaint on your behalf?

**A:** I don't know.

**Q:** Well, did you go on line and make the complaint; do you have an independent recollection of that?

**A:** In like in terms of the report had to be done.

**Q:** In terms of the initial report against [Respondent] did you make it or did your principal make it if you know?

**A:** I don't recall.

**Q:** When you said on direct that you made the complaint that wasn't accurate was it?

**A:** I wasn't pushed to do it we had a discussion.

This type of colloquy continued for some time until eventually the discussion ended as follows:

**Q:** To your knowledge if you know did your principal Lisa Fuentes do that if you know?

**A:** I don't know, I assumed it was her.

**Q:** You assumed she did it?

**A:** (Indicating)

**Q:** Is that yes? You have to answer she can't take down gestures she is typing.

**A:** I assume she was the one that made the complaint.

**Q:** Nothing further.

As is evident from the series of questions, Vinales had difficulty answering direct questions.

I find that, after three orders to Vinales to turn over the victim's things and his refusal three times, Respondent grabbed him by the collar and pushed him back in an attempt to get the victim's belongings was with police necessity. He had a victim being treated by EMS who needed to be identified through her paperwork. In addition, her personal belongings needed to be safeguarded and although Vinales was in possession of her belongings, he was neither a friend nor relative of the victim and, in fact, he testified that he never even spoke to her prior to the incident date; they merely worked in the same building. Vinales did not establish any legal reason why he, rather than the police, should be in possession of her personal belongings. Vinales took it upon himself to hold on to her wallet and cell phone even after three requests from Respondent to turn the items over to him. Respondent had absolute police necessity to take action against Vinales, albeit physical.

Accordingly, I find Respondent Not Guilty of Specification No. 1.

Specification No. 2

Respondent stands charged herein in that he was discourteous to Vinales in that he yelled at him, Give me the fucking stuff.”

Fuentes testified before this forum that the police acted inappropriately to the point where she filed a CCRB complaint, yet she failed to fully appreciate the significance of one of her subordinates disobeying a police directive three times to turn the property over to him. Fuentes saw it as school policy to hold on to things, but outside the school during an incident that has become a police incident where an arrest is likely to result, she failed to acknowledge that the police have authority over that incident in the street. Likewise, Vinales seemed to have a problem with police as the authority. He stated during cross-examination, “School Safety Agents are better able to control situations than police officers in uniform.” The Court has no insight as to where Vinales derives this interpretation. Clearly, the police have authority on the street where an incident occurs. SSAs have no authority in this instance outside of the school where students are not involved in the incident.

Respondent testified that he did not utter the discourteous words as alleged. He also testified that he could not recall whether he threatened to arrest Vinales if he did not turn over the belongings. It is the belief of this Court that during this tense situation with no cooperation, Respondent may not remember using profanity before actually grabbing the property from Vinales. His partner, Pakiakis, testified that he did not hear the remark, but he heard Vinales repeatedly refuse to turn over the belongings. It must be kept in mind that Pakiakis was dealing with the boyfriend during this incident, not Vinales, and

may not have heard every exchange between Respondent and Vinales. Even Vinales admitted to repeatedly refusing Respondent's request to turn over the belongings.

It is the belief of the Court that Respondent had a situation where a victim was being treated by EMS, would likely be transported to the hospital (which was the case as stipulated to) and she needed to be identified through her personal belongings. Respondent, after three verbal requests to Vinales to turn over the victim's property to him, was not engaged in actionable misconduct when he yelled at Vinales, "Give me the fucking stuff." Both Fuentes and Vinales testified that the remark was made by Respondent. This tribunal has long held that there are instances where police officers have to use profanity to garner attention or punctuate an order and get results on the streets after courteous requests for cooperation are made without results. (See Disciplinary Case No. 78667/03, signed November 7, 2004, where a five year police officer with no prior discipline had a charge of courtesy dismissed when, following a shooting, after repeated orders to a pre-Caribbean Day parade crowd to step back uttered the words, "Get the fuck back.")

Accordingly, I find Respondent Not Guilty of Specification No. 2  
Specification No. 3

Respondent stands charged herein in that he abused his authority as a member of the New York City Police Department in that Respondent issued a summons to Vinales without sufficient legal authority.

Respondent testified that he thought that the Disorderly Conduct statute covered failure to comply with a lawful order. Respondent was clearly mistaken as to the

language of the statute because he thought that Vinales violated subsection E and the Disorderly Conduct statute is separated by numbers. Respondent's lack of familiarity with the Disorderly Conduct statute is evident by the fact that he failed to list a subsection of the violation in the summons that was issued to Vinales.

The language of Penal Law section 240.20, Disorderly Conduct, states in pertinent part:

*A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating risk thereof:*

6. *He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse;*

Thus, even though the statute refers to a lawful order and Respondent gave Vinales an order three times, Respondent did not follow the order with one to disperse as the statute requires. Therefore, Respondent was without the legal authority to issue a Disorderly Conduct summons on that premise.

Accordingly, Respondent is found Guilty of Specification No. 3.

#### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on August 31, 1998. Information from his personnel

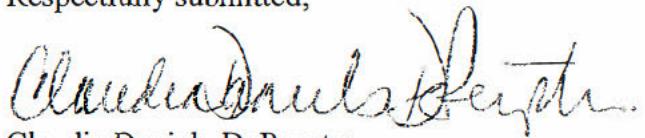
folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has been found Guilty of the sole specification of issuing a summons without sufficient legal authority. The Court found that the summons was issued by Respondent based on his mistaken belief that he could issue one for disorderly conduct when Vinales failed to comply with his order three times to turn over the personal belongings of the victim. The Disorderly Conduct statute, 240.20 subsection 6, however, requires that a lawful order be accompanied with an order to disperse. Since Respondent did not order Vinales to disperse, legally he had no basis to issue the summons on that ground. The Court did find, however, that Respondent was acting under a good faith belief while on duty that he had the authority to issue such a summons albeit that his belief was mistaken.

The Assistant Department Advocate asked for a penalty of the forfeiture of ten vacation days. The Court disagrees. Respondent was found Not Guilty of Specification Nos. 1 and 2. In addition, Respondent lacks familiarity with the contents of the Disorderly Conduct statute and would likely benefit from retraining with respect to it.

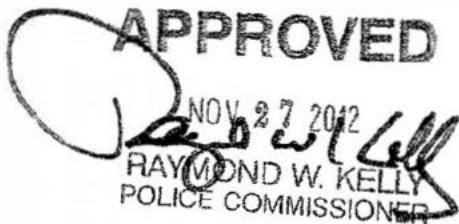
Accordingly, based on the language of the Administrative Code of the City of New York, section 14-115, it is recommended that Respondent be Reprimanded with respect to Specification No. 3.

Respectfully submitted,



Claudia Daniels-DePeyster

Assistant Deputy Commissioner-Trials



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

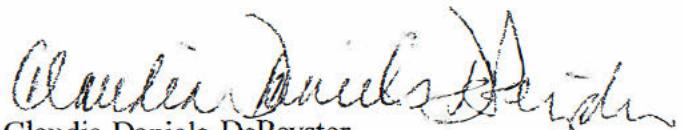
Subject: CONFIDENTIAL MEMORANDUM  
POICE OFFICER JOHN QUIGLEY  
TAX REGISTRY NO. 922996  
DISCIPLINARY CASE NO. 938-10

In 2010, 2009 and 2008, Respondent received an overall rating of 4 "Highly Competent" on his annual performance evaluations. Respondent has received no medals in his career to date.

In over 13 years of service, Respondent has reported sick on 67 occasions, none of which were for line-of-duty injuries.  
[REDACTED]  
[REDACTED]

Respondent has no prior formal disciplinary record.

For your consideration.

  
Claudia Daniels-DePeyster  
Assistant Deputy Commissioner [REDACTED] Trials